

57-1-29. Proceeds of trustee's sale -- Disposition.

(1) (a) The trustee shall apply the proceeds of a trustee's sale in the following order:

(i) first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney fees actually incurred not to exceed any amount provided for in the trust deed;

(ii) second, to payment of the obligation secured by the trust deed; and

(iii) (A) the balance, if any, to the person or persons legally entitled to the proceeds; or

(B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.

(b) If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses.

(c) Upon depositing the balance and filing the affidavit, the trustee is discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavit within 15 days of receiving the affidavit of deposit from the trustee.

(3) (a) Any claimant may file a petition for adjudication of priority to the funds.

(b) A petitioner requesting funds under Subsection (3)(a) shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner.

(c) The petitioner's notice under Subsection (3)(b) shall specify that all claimants have 45 days to contest the petition by affidavit or counter-petition.

(d) If no affidavit or counter-petition is filed within 45 days of the notice required by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) (a) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing.

(b) At a hearing under Subsection (4)(a), the court shall establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) A person having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fails to appear and assert the person's claim is barred from any claim to the funds after the entry of the court's order under Subsection (4).

Amended by Chapter 230, 2008 General Session